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Board of Vocational Nursing
and Psychiatric Technicians

8
9 **BEFORE THE**
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. VN-2009-3853

12 **KATHERINE LEE BURGRAFF**
13 **8431 Cerulean Drive**
14 **Garden Grove, CA 92841**

A C C U S A T I O N

15 **Vocational Nurse License No. VN 213260**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in
21 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric
22 Technicians, Department of Consumer Affairs.

23 2. On or about January 31, 2005, the Board of Vocational Nursing and Psychiatric
24 Technicians issued Vocational Nurse License Number VN 213260 to Katherine Lee Burgraff
25 (Respondent). Vocational Nurse License Number VN 213260 expired on April 30, 2008 and has
26 not been renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

5. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with Code section 2875) of the Vocational Nursing Practice Act.

6. Code section 2892 provides, in pertinent part, that an expired license may renew at any time within four years after its expiration.

STATUTORY PROVISIONS

7. Section 490 of the Code states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an

independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.

8. Section 493 of the Code states, in pertinent part:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

9. Code section 2878 states, in pertinent part:

The board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

....

10. Code section 2878.5 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

....

(b) Use any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Section 4022, or any alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that the use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

....

1 (c) Be convicted of a criminal offense involving possession of any narcotic
2 or dangerous drug, or the prescription, consumption, or self-administration of any of
the substances described in subdivisions (a) and (b) of this section, in which event
the record of the conviction is conclusive evidence thereof.

3 (d) Be committed or confined by a court of competent jurisdiction for
4 intemperate use of or addiction to the use of any of the substances described in
subdivisions (a) and (b) of this section, in which event the court order of
5 commitment or confinement is prima facie evidence of that commitment or
confinement.

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7 **COST RECOVERY**

8 11. Code section 125.3 provides, in pertinent part, that a Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 **REGULATORY PROVISIONS**

13 12. California Code of Regulations, Title 16, section 2521, states, in pertinent part:

14 For the purposes of denial, suspension or revocation of a license pursuant to
15 Division 1.5 (commencing with Section 475) of the Business and Professions Code,
a crime or act shall be considered to be substantially related to the qualifications,
16 functions or duties of a licensed vocational nurse if to a substantial degree it
evidences present or potential unfitness of a licensed vocational nurse to perform the
17 functions authorized by his license in a manner consistent with the public health,
safety, or welfare. Such crimes or acts shall include, but not be limited to those
18 involving the following:

19 (a) Procuring a license by fraud, misrepresentation, or mistake.

20 (b) A conviction of practicing medicine without a license in violation of
Chapter 5 of Division 2 of the Business and Professions Code.

21 (c) Violating or attempting to violate, directly or indirectly, or assisting in or
22 abetting the violation of, or conspiring to violate any provision or term of Chapter
6.5, Division 2 of the Business and Professions Code.

23 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,
24 whether a licensed physician or not, in the performance of or arranging for a
violation of any of the provisions of Article 13, Chapter 5, Division 2 of the
25 Business and Professions Code.

26 (e) Conviction of a crime involving fiscal dishonesty.

27 (f) Any crime or act involving the sale, gift, administration, or furnishing of
28 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of
the Business and Professions Code.

13. California Code of Regulations, Title 16, section 2522, states, in pertinent part:

When considering a) the denial of a license under Section 480 of the Business and Professions Code, b) the suspension or revocation of a license on the ground that a licensee has been convicted of a crime, or c) a petition for reinstatement of a license under Section 2787.7 of the Business and Professions Code, the Board in evaluating the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria:

(1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

(2) Actual or potential harm to the public.

(3) Actual or potential harm to any patient.

(4) Overall disciplinary record.

(5) Overall criminal actions taken by any federal, state or local agency or court.

(6) Prior warnings on record or prior remediation.

(7) Number and/or variety of current violations.

(8) Mitigation evidence.

(9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.

(10) Time passed since the act(s) or offense(s) occurred.

(11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.

(12) Cooperation with the Board and other law enforcement or regulatory agencies.

(13) Other rehabilitation evidence.

FIRST CAUSE FOR DISCIPLINE

(February 9, 2009 Criminal Conviction for DUI on October 19, 2008)

14. Respondent has subjected her license to disciplinary action under sections 490 and 2878, subdivision (f) of the Code on the grounds that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed vocational nurse.

The circumstances are as follows:

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1 a. On or about February 9, 2009, in a criminal proceeding entitled *People of the*
2 *State of California v. Katherine Lee Burgraff*, in Orange County Superior Court (Harbor
3 Justice Center), case number 08HM09457, Respondent was convicted on her plea of guilty
4 of violating Vehicle Code section 23152, subdivision (a), driving under the influence of
5 alcohol, a misdemeanor.

6 b. As a result of the conviction, on or about February 9, 2009, Respondent was
7 sentenced to three years informal probation, and ordered to serve two days in jail (with
8 credit for two days), attend and complete a three-month First Offender Alcohol Program,
9 comply with standard alcohol conditions, and pay of \$1,553 in fees, fines, and restitution.

10 c. The facts that led to the conviction were that shortly after midnight on or about
11 October 19, 2008, an officer with the Irvine Police Department, while on a traffic stop with
12 another vehicle, observed Respondent stopped at a traffic light without her headlights on.
13 The officer made contact with Respondent in the roadway and directed her to pull her
14 vehicle to the curb. Another officer arrived to assist with the evaluation of Respondent.
15 The officer detected a moderate odor of an alcoholic beverage emitting from Respondent's
16 breath and person. Respondent admitted consuming wine earlier in the evening. The
17 officer conducted a series of field sobriety tests which Respondent did not perform
18 satisfactorily. Respondent agreed to submit to a Preliminary Alcohol Screening (PAS)
19 which resulted in a blood alcohol concentration (BAC) of 0.17 and 0.18 percent. Based on
20 Respondent's objective symptoms of intoxication and the results of the PAS, she was
21 arrested for driving under the influence of alcohol.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(June 17, 2010 Criminal Conviction for DUI on March 18, 2010)**

24 15. Respondent has subjected her license to disciplinary action under sections 490 and
25 2878, subdivision (f) of the Code on the grounds that Respondent was convicted of a crime that is
26 substantially related to the qualifications, functions, and duties of a licensed vocational nurse.

27 The circumstances are as follows:
28

1 a. On or about June 17, 2010, in a criminal proceeding entitled *People of the State*
2 *of California v. Katherine Lee Burgraff*, in Orange County Superior Court (West Justice
3 Center), case number 10WM03543, Respondent was convicted on her plea of guilty of
4 violating Vehicle Code section 23152, subdivision (a), driving under the influence of
5 alcohol; Vehicle Code section 23152, subdivision (b), driving with a BAC of 0.08% or
6 more, with an enhancement for the conviction being within ten years of committing the
7 same offense, pursuant to Vehicle Code section 23540. The court further found that
8 Respondent suffered a prior conviction of violating Vehicle Code section 23152,
9 subdivision (b), as further described in paragraph 13 above. A third count of unlawfully
10 operating a motor vehicle while on probation for a previous violation of Vehicle Code
11 section 23152, subdivision (b) was suspended.

12 b. As a result of the conviction, on or about June 17, 2010, Respondent was
13 sentenced to five years informal probation, and ordered to serve 60 days in the Orange
14 County Jail (supervised electronic confinement was authorized), complete an 18-month
15 Multiple Offender Alcohol Program, comply with standard alcohol conditions, and pay
16 \$837 in fees, fines, and restitution.

17 c. The facts that led to the conviction were that on or about the early morning of
18 March 18, 2010, officers from the Westminster Police Department conducted a traffic stop
19 on Respondent after she was observed traveling at an unsafe speed and swerving. Upon
20 contacting Respondent, the officers noted a strong odor of an alcoholic beverage on her
21 breath, her eyes were bloodshot and watery, and her speech was slurred and sometimes
22 incoherent. Respondent submitted to a series of field sobriety tests, which she failed.
23 Respondent agreed to a PAS, which resulted in a BAC of .100 and .096. The investigation
24 revealed that Respondent was on probation for a prior DUI conviction. Based on her
25 objective symptoms of intoxication and the PAS results, Respondent was arrested for
26 driving under the influence of alcohol.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)**

3 16. Respondent has subjected her license to disciplinary action under section 2878.5,
4 subdivision (b) of the Code in that on or about October 19, 2008 and March 18, 2010, as
5 described in paragraphs 14-15 above, Respondent used alcoholic beverages to an extent or in a
6 manner that was potentially dangerous or injurious to herself and to others in that she operated a
7 motor vehicle while impaired by alcohol.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offenses)**

10 17. Respondent has subjected her license to disciplinary action under section 2878.5,
11 subdivision (c) of the Code in that on or about February 9, 2009, and June 17, 2010, as described
12 in paragraphs 14-15 above, Respondent was convicted of separate criminal offenses involving the
13 consumption and/or self-administration of alcohol, which constitutes unprofessional conduct.

14 **FIFTH CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct – Confined by a Court for Alcohol-Related Criminal Offenses)**

16 18. Respondent has subjected her license to disciplinary action under section 2878.5,
17 subdivision (d) of the Code in that as a result of Respondent's convictions on or about February 9,
18 2009, and June 17, 2010, as described in paragraphs 14-15 above, Respondent was sentenced to
19 jail for separate criminal offenses involving the consumption and/or self-administration of
20 alcohol, which constitutes unprofessional conduct.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
24 issue a decision:

25 1. Revoking or suspending Vocational Nurse License Number VN 213260, issued to
26 Katherine Lee Burgraff;
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1 2. Ordering Katherine Lee Burgraff to pay the Board of Vocational Nursing and
2 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
3 pursuant to Business and Professions Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.
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7 DATED: April 26, 2011.
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TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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